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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,345	03/16/2001	Kirthiga Reddy	499.058US1	7782

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EXAMINER

INGBERG, TODD D

ART UNIT	PAPER NUMBER
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2124

DATE MAILED: 07/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Interview Summary

Application No.

09/811,345

Applicant(s)

REDDY ET AL.

Examiner

Todd Ingberg

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All participants (applicant, applicant's representative, PTO personnel):

(1) Todd Ingberg.

(3) \_\_\_\_\_.

(2) Tom Brennan (FAX).

(4) \_\_\_\_\_.

Date of Interview: 30 June 2004.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☒ Yes e) ☐ No.

If Yes, brief description: See the attachment, which was FAXED.

Claim(s) discussed: \_\_\_\_\_.

Identification of prior art discussed: \_\_\_\_\_.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: An Interview was scheduled for 3PM. The Examiner called and was unable to reach Mr. Brennan. So the Examiner wrote up the information he wanted to convey. This information was sent via FAX. And is now made of record.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

#### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

##### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

#### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

### *Outline*

The following is intended to add clarity on how to respond to the First Action On Merit (FAOM) mailed June 7, 2004.

- How to perfect your domestic Priority claim.
- Rule 105 Response
- Inventorship Section of Office Action.

### *Priority*

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged but denied. However, the provisional application 60/189,863 upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for claims 1 - 60 of this application. The Provisional Application has a large Appendix (1,100 pages) made up mostly of documents dated well before the applicant's filing date and does not able to support patentability. The Specification of the Provisional provides a high level overview of an invention. The claims are for an API not the toolkit presently claimed in this application. Also, the Assignee (Silicon Graphics) will loss company confidential status on documents in the Provisional in the event the US cases is allowed. This latter point is a formality and is not a consideration for determining patentability. **Effective filing date for application 09/811,345 is March 16, 2001.**

### *Admitted Prior Art*

2.	<u>Appendix</u>	<u>Title</u>	<u>Pages</u>	<u>Date</u>
A.		Introduction to the Cluster Configuration Database	1 - 12	2/3/1998
B.		Cluster Administration Interface Model	1 - 4	4/22/1998
C.		Cluster Administration Services Basic Services	1 - 14	5/28/1990
D.		Cluster Administration Services Messaging	1 - 22	6/6/1998
E.		Cluster Administration Services Plug-ins	1 - 23	5/28/1998
F.		Cluster Configuration Database: Back End Interface	1 - 20	2/2/1998
G.		Chaos Membership Services	1 - 29	3/27/2997

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H.	Group Membership Services	1 – 36	5/15/1998
I.	System Resource Manager	1 – 14	1997
J.	Putty 8045	P1 - P66	1/7/1999
K.	Details of the Rhino Infrastructure Appendix K may not be Admitted Prior Art	Cl - C376	PRINTOUT DATE
L.	VERITAS Volume Manager – Administrator's Reference Guide Release 3.0	1 – 198	1/1999
M.	VERITAS Volume Manager - Command Line Interface Administrator's Guide Release 3.0	1 – 148	2/1999
N.	VERITAS Volume Manager - Getting Started Guide Release 3.0	1 – 72	1/1999

### **How to perfect your domestic Priority claim.**

The domestic priority can be perfected by mapping the limitations of the independent claims to the reference K. Details of the Rhino Infrastructure Cl - C376 PRINTOUT DATE Appendix K may not be Admitted Prior Art, in doing so Applicant will be aware of the programs in the program listings that were written by the named inventors. This mapping is to non prior art. The documents in the list are mostly admitted prior art. Also, a three ½ page overview exists. This too can be used in the mapping process.

### ***Requirement For Information (Rule 105) - 37 USC §1.105***

3. Applicant, Assignee and Applicant's Representative if in possession of material meeting the scope of the RFI are required under 37 CFR 1.105 to provide the following that the Examiner has determined is reasonably necessary to the examination of this application.

4. Appendix K is a print out of the Rhino Library Reference. Although the print date is 2000 it is not clear the date the Appendix was actually made. In the event, a beta release was made of this library termed "Details of Rhino Infrastructure" 376 pages. The "*date of first on sale*" OR "*date of first use*" and an accurate disclosure of the library at the time of first use is the scope of the RFI. If the information is not requested is not available a statement indicating the information is not available is required.

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5. The Examiner has attempted to locate a copy of Rhino on the WWW. The Examiner is requesting a copy of the Rhino Library with the “*date of first on sale*” OR the “*date of first use*” and an *accurate disclosure of the library as per that date*.

This requirement is made with the intent to assist in the prosecution of this case. The Examiner feels the scope of this requirement is narrow and should be well within the abilities of the concerned parties to provide this information.

The information is required to identify Rhino (Prior Art ?) as disclosed in the Appendix K from the disclosed invention. Where applicant does not have or cannot have readily obtained items of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete response to the requirement for that item.

The fee and certification requirements of 37 § C.F.R. 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 § C.F.R. 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communications responding to this requirement and any information disclosures beyond the scope of this requirement under 37 § C.F.R. 1.105 are subject to the fee and certification requirement of 37 § C.F.R. 1.97

This requirement is subject to the provisions of 37 C.F.R. 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

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### **Rule 105 Response**

This requirement is made with the understanding that the extensive programs in the reference K. Details of the Rhino Infrastructure CI - C376 PRINTOUT DATE Appendix K may not be Admitted Prior Art was not written in a night. The date listed above are important to determining the domestic priority date for the Application.

### ***Inventorship***

6. A question of Inventorship is raised. If the Rhino project is part of the claimed invention and the RPM of Group User Interface/X ( see PTO-892) represents a list of Companies working on the Rhino project a statement that the claimed invention is related to only work by the named inventors will overcome the question for the record.

### **Inventorship Section of Office Action.**

This section is not to be responded to. The mapping operation above with the Applicant making the determination what code the named inventors wrote is sufficient. No question of Inventorship is being raised. No 102(f) rejection is present and this section is moot.